

United States District Court

NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

HC OPERATING, L.P. et al.	§	
	§	
v.	§	CIVIL ACTION NO. 3:19-CV-2425-S-BN
	§	
ATLAS APARTMENTS	§	
ACQUISITIONS, LLC et al.	§	

ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

The United States Magistrate Judge made findings, conclusions, and a recommendation in this case. Plaintiffs filed objections, contending, among other things, that the Magistrate Judge erred by “suggest[ing] that the lis pendens cannot be expunged if Atlas submits *some* evidence that its claims are valid . . . even if it outweighed by the preponderance of the evidence submitted at the February 21 hearing.” ECF No. 40 at 6. According to Plaintiff, Defendant Atlas Apartments Acquisitions, LLC (“Atlas”) was “required to prove, *by a preponderance of the evidence*, that [it] would probably prevail at trial.” *Id.*

The Magistrate Judge, however, followed the correct standard, recommending that the Court “find[] that Atlas established ‘the probable validity of its claim by a preponderance of the evidence.’”¹ ECF No. 35 at 11 (quoting *In re I-10 Poorman Invs., Inc.*, 549 S.W.3d 614, 617 (Tex. App.—Houston [1st Dist.] 2017, orig. proceeding)); *see also id.* at 14 (recommending that the first prong of a breach of contract was satisfied “by a preponderance of the evidence”); *id.* at 15 (finding the second element satisfied based upon a credibility determination); *id.* at 17, 22 (weighing the evidence and finding the third element satisfied); *id.* at 23 (same as to the fourth

¹ To the extent that, as Plaintiffs suggest, proving the “probable validity” of a claim requires a claimant to prove a likelihood of success on the merits, *see* ECF No. 40 at 5, the Court finds that Atlas has met this burden in this case.

element); *id.* at 23-26 (same as to Defendant's entitlement to specific performance). Thus, the Court finds no error in the Magistrate Judge's analysis.

As for the remainder of the proposed findings, conclusions, and recommendation, the District Court reviewed de novo those portions of the proposed findings, conclusions, and recommendation to which objection was made, and reviewed the remaining proposed findings, conclusions, and recommendation for plain error. Finding no error, the Court **ACCEPTS** the Findings, Conclusions, and Recommendation of the United States Magistrate Judge and **DENIES** Plaintiffs' Motion to Expunge *Lis Pendens* [ECF No. 17].

SO ORDERED.

SIGNED April 8, 2020.



KAREN GREN SCHOLER
UNITED STATES DISTRICT JUDGE